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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 \* \* \*

6 LEWIS STEWART

Case No. 3:17-cv-00132-MMD-CLB

7 Plaintiff,

ORDER

8 v.

9 ROMEO ARANAS, *et al.*,

10 Defendants.

11  
12 **I. SUMMARY**

13 *Pro Se* Plaintiff Lewis Stewart brings this civil rights action under 42 U.S.C. § 1983.  
14 Before the Court is a Report and Recommendation (“R&R”) of United States Magistrate  
15 Judge Carla Baldwin (ECF No. 60) relating to Defendants’<sup>1</sup> motion for summary judgment  
16 (“Motion”). (ECF No. 47.) Judge Baldwin recommends that this Court deny Defendants’  
17 Motion. (ECF No. 60 at 1.) Defendants have filed a partial objection (“Objection”) (ECF  
18 No. 62)<sup>2</sup>, challenging only Judge Baldwin’s finding that they are not entitled to qualified  
19 immunity. For the reasons stated below, the Court overrules the Objection and adopts the  
20 R&R in its entirety.

21 **II. BACKGROUND**

22 Plaintiff was formerly an inmate in the custody of the Nevada Department of  
23 Corrections (“NDOC”). (ECF No. 4 at 1.) Plaintiff was incarcerated at the Southern Desert  
24 Correctional Center (“SDCC”) during the time relevant to this action. (*Id.*) Defendants  
25 acknowledge that Plaintiff has a history of benign prostatic hyperplasia, also known as an  
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27 <sup>1</sup>Defendants are Romeo Aranas, James G. Cox, Francisco M. Sanchez, and Brian  
28 E. Williams.

<sup>2</sup>Plaintiff filed a response to the Objection. (ECF No. 63.)

1 enlarged prostate. (ECF No. 47 at 3, ECF No. 47-2 at 1.) The Court incorporates by  
2 reference Judge Baldwin's recitation of the factual and procedural background as provided  
3 in the R&R (ECF No. 60 at 1–3), which the Court adopts.

### 4 **III. LEGAL STANDARD**

#### 5 **A. Review of the Magistrate Judge's Recommendation**

6 This Court "may accept, reject, or modify, in whole or in part, the findings or  
7 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party  
8 timely objects to a magistrate judge's report and recommendation, then the Court is  
9 required to "make a de novo determination of those portions of the [report and  
10 recommendation] to which objection is made." *Id.* Where a party fails to object, however,  
11 the Court is not required to conduct "any review at all . . . of any issue that is not the subject  
12 of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v.*  
13 *Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) ("De novo review of the magistrate judges'  
14 findings and recommendations is required if, but *only* if, one or both parties file objections  
15 to the findings and recommendations.") (emphasis in original); Fed. R. Civ. P. 72, Advisory  
16 Committee Notes (1983) (providing that a court "need only satisfy itself that there is no  
17 clear error on the face of the record in order to accept the recommendation").

18 In light of Defendants' Objection to part of the R&R, the Court conducts a de novo  
19 review to determine whether to adopt the rulings in the R&R to which Defendants object.  
20 Having reviewed the R&R, the underlying briefs,<sup>3</sup> and the accompanying exhibits, the  
21 Court agrees with Judge Baldwin and will adopt the R&R.

#### 22 **B. Summary Judgment Standard**

23 "The purpose of summary judgment is to avoid unnecessary trials when there is no  
24 dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18  
25 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the pleadings,  
26 the discovery and disclosure materials on file, and any affidavits "show there is no genuine  
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28 <sup>3</sup>The Court has also reviewed Plaintiff's response to the Motion (ECF No. 55), and  
Defendants' reply (ECF No. 56).

1 issue as to any material fact and that the movant is entitled to judgment as a matter of  
2 law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). An issue is “genuine” if there is  
3 a sufficient evidentiary basis on which a reasonable fact-finder could find for the  
4 nonmoving party and a dispute is “material” if it could affect the outcome of the suit under  
5 the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986). Where  
6 reasonable minds could differ on the material facts at issue, however, summary judgment  
7 is not appropriate. See *id.* at 250–51. “The amount of evidence necessary to raise a  
8 genuine issue of material fact is enough ‘to require a jury or judge to resolve the parties’  
9 differing versions of the truth at trial.” *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th  
10 Cir. 1983) (quoting *First Nat’l Bank v. Cities Service Co.*, 391 U.S. 253, 288–89 (1968)).  
11 In evaluating a summary judgment motion, a court views all facts and draws all inferences  
12 in the light most favorable to the nonmoving party. See *Kaiser Cement Corp. v. Fishbach*  
13 *& Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

14 The moving party bears the burden of showing that there are no genuine issues of  
15 material fact. See *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once  
16 the moving party satisfies Rule 56’s requirements, the burden shifts to the party resisting  
17 the motion to “set forth specific facts showing that there is a genuine issue for trial.”  
18 *Anderson*, 477 U.S. at 256. The nonmoving party “may not rely on denials in the pleadings  
19 but must produce specific evidence, through affidavits or admissible discovery material, to  
20 show that the dispute exists,” *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir.  
21 1991), and “must do more than simply show that there is some metaphysical doubt as to  
22 the material facts.” *Orr v. Bank of Am.*, 285 F.3d 764, 783 (9th Cir. 2002) (quoting  
23 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). “The mere  
24 existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient.”  
25 *Anderson*, 477 U.S. at 252.

#### 26 **IV. DISCUSSION**

27 Judge Baldwin recommends that the Court deny summary judgment for Defendants  
28 on Plaintiff’s remaining claims, which are two counts of Eighth Amendment deliberate

1 indifference to serious medical needs. (See generally ECF No. 60, ECF No. 4.)  
2 Defendants object only to Judge Baldwin's recommendation that they are not entitled to  
3 qualified immunity. (ECF No. 62 at 1.) Specifically, Defendants argue that Judge Baldwin  
4 erred in finding that they violated a clearly established constitutional right of Plaintiff. (*Id.*  
5 at 4.) Plaintiff counters that a reasonable official in Defendants' positions would have  
6 known that Plaintiff's treatment was unconstitutional. (ECF No. 63 at 5.)

7 The Court conducts a two-step inquiry to determine whether Defendants are  
8 entitled to qualified immunity. See, e.g., *Groves v. City of Reno*, Case No. 3:13-cv-00537-  
9 MMD-WGC, 2015 WL 5350099, \*4 (D. Nev. Sept. 14, 2015). First, the Court decides  
10 "whether the facts shown make out a violation of a constitutional right." *Id.* If the Court  
11 finds a constitutional violation, the Court then decides "whether the constitutional right was  
12 clearly established as of the date of the alleged misconduct." *Id.* (citations omitted).  
13 Defendants do not object to Judge Baldwin's finding that a genuine issue of material fact  
14 exists regarding whether they were deliberately indifferent to Plaintiff's medical needs.  
15 (ECF No. 62 at 2.) Therefore, the Court discusses only the second step.

16 "A [g]overnment official's conduct violates clearly established law when, at the time  
17 of the challenged conduct, [t]he contours of [a] right [are] sufficiently clear that every  
18 reasonable official would have understood that what he is doing violates that right."  
19 *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (quotation marks and citation omitted). The  
20 Supreme Court has cautioned courts "not [to] define clearly established law at a high level  
21 of generality." *Id.* at 742 (citations omitted). Yet, it is "clear that officials can still be on  
22 notice that their conduct violates established law even in novel factual circumstances."  
23 *Hope v. Pelzer*, 536 U.S. 730, 741 (2002).

24 Here, Defendants argue that Judge Baldwin erred by relying on *Toguchi v. Chung*,  
25 to find a clearly established constitutional right. (ECF No. 62 at 5–7); *Toguchi v. Chung*,  
26 391 F.3d 1051 (9th Cir. 2004). They contend that while *Toguchi* provides a general  
27 statement of the law defining deliberate indifference to medical needs, the case is not  
28 sufficiently analogous to put Defendants on clear notice that their treatment of Plaintiff may

1 have been unconstitutional. (ECF No. 62 at 5–8.) Instead, Defendants contend that given  
2 the Ninth Circuit’s instructions that determinations of qualified immunity must be “fact  
3 specific” and “highly contextualized”, *Hamby v. Hammond* would be a more appropriate  
4 case to rely on. (See *id.* at 8–11); *Hamby v. Hammond* 821 F.3d 1085, 1091 (9th Cir.  
5 2016). In *Hamby*, the court found that prison officials did not violate a clearly established  
6 constitutional right by denying plaintiff’s hernia surgery because “existing precedent [did]  
7 not place beyond debate the unconstitutionality of the course of non-surgical treatment  
8 pursued by the prison officials . . .” *Hamby*, 821 F.3d at 1094. Similar to the court’s  
9 reasoning in *Hamby*, Defendants argue that because there is only one unpublished Ninth  
10 Circuit case that considers the treatment of prostatic hyperplasia, Defendants had no clear  
11 notice that their treatment of Plaintiff could be unconstitutional. (ECF No. 62 at 8.) The  
12 Court disagrees that the inquiry must be so narrow.

13       Qualified immunity does not require the Court to find a case directly on point to  
14 determine that a law has been clearly established. See *Deorle v. Rutherford*, 272 F.3d  
15 1272, 1285–86 (9th Cir. 2001) (clarifying that qualified immunity does not require that a  
16 prior case prohibit the exact misconduct at issue in the case); *Jackson v. McIntosh*, 90  
17 F.3d 330, 332 (9th Cir. 1996) (“For a right to be clearly established it is not necessary that  
18 the very action in question have previously been held unlawful.”). And even if this Court  
19 were to accept that *Toguchi* did not put Defendants on notice that their conduct may have  
20 been unconstitutional, case law clearly establishes that “[p]rison officials are deliberately  
21 indifferent to a prisoner’s serious medical needs when they deny, delay, or intentionally  
22 interfere with medical treatment.” *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002)  
23 (internal quotation marks omitted); see also *Singleton v. Lopez*, 577 F. App’x. 733, 735  
24 (9th Cir. 2014) (finding that a substantial delay in effectively treating plaintiff’s pain could  
25 amount to deliberate indifference, even where plaintiff had already received some  
26 treatment).

27       Therefore, the Court adopts Judge Baldwin’s recommendation to deny summary  
28 judgment for Defendants on the issue of qualified immunity.

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